IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.400 OF 2003

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Chief Electrical Engineer
(Construction) Western Railway
and another. ...Petitioners

v/s.

M/s.Cimechel Engineering Co.
& Ors. ...Respondents

...

Mr.Sureshkumar for the Petitioners.
Mr.A.M. Vernekar for the Respondents.

...

CORAM: D.K.DESHMUKH, J.

DATED: 29TH MARCH,2005

P.C.:

1. By this Petition, the Petitioners challenge the majority award on claim No.1.

2. I have heard the learned Counsel for both sides in detail. I have perused the award, both majority and minority. In my opinion, the letter dated 4-10-1995 where the Respondent No.1 agreed to accept Rs.3,30,000/- on account of difference in price operates to estop the Respondent No.1 from claiming any amount in excess of Rs.3,30,000/-. In the minority award, in my opinion, the view has rightly been taken that once the Respondent No.1 accepted that he is entitled only to Rs.3,30,000/- on account of price variation, he could not have gone back and claimed larger amount. So far as clause 35 is concerned, variation in the terms of the contract could be brought about even without amending the terms of the contract, so far as the Respondent No.1 is concerned. In order that variation in terms of the contract should bind the railway, carrying out of appropriate amendments in the document of contract itself is necessary. Therefore, so far as the Respondent No.1 is concerned, its letter dated 4-10-1995 will operate to vary the terms in the contract. There is no question of the letter dated

4-10-1995 being written under any duress or due to any undue influence. I have gone through the statement of claim. There is no allegation that the railway did any act which is forbidden by the Indian Penal Code or that the railway unlawfully detained any property to the disadvantage of the Respondent No.1 and therefore, there is no question of there being any coercion. In my opinion, therefore, the arbitrators were not justified, by majority award, in holding that the Respondent No.1 is entitled to the amount of Rs.15,32,989/-. In my opinion, the Respondent No.1 was only entitled to the amount of Rs.3,30,000/- to which he had agreed by letter dated 4-10-1995. The majority award is, therefore, set aside. It is agreed between the parties that as from the date of the award, the Respondent No.1 now would be entitled to Rs.3,06,059/-, the Petitioner shall also pay interest on the amount of Rs.3,06,059/- from the date of the award till the date of realisation at the rate of 10% p.a.

3. It is common ground that the Petitioner has deposited an amount of Rs.4,00,000/- in this court pursuant to the interim order dated 10-11-2003. By consent of parties, the Respondent No.1 is permitted

to withdraw the amount in the following manner:

Within a period of two weeks from today the Respondent No.1 shall communicate the calculation of the Respondent No.1 about the exact amount to which the Respondent No.1 is entitled according to this order. The Petitioner may raise any objection to the calculations of the Respondent No.1 within a period of one week thereafter. In case any objection is raised, matter may be placed before the Court for further directions and if no objection is raised, the Respondent No.1 be permitted to withdraw the amount deposited by the Petitioner, with the amount of accrual, if the amount to which the Respondent No.1 is entitled as per this order is in excess of the amount which is deposited. If according to the calculation of the Respondent No.1, the Respondent No.1 is entitled to any amount less than the amount which is in deposit, then the Respondent No.1 be permitted to withdraw the amount to the extent of its claim and balance amount be permitted to be withdrawn by the Petitioner. The Respondent No.1 is directed to pay costs of this petition to the Petitioner, as incurred by the Petitioner.

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